



Department of Pesticide Regulation



Paul Gosselin
Acting Director

Arnold Schwarzenegger
Governor

August 25, 2004

Mr. Bruce Howard
Latham and Watkins, LLP
633 West Fifth Street, Suite 4000
Los Angeles, California 90071-2007

Dear Mr. Howard:

This responds to your July 1, 2004, telephone call regarding the need for Nalco Company to be licensed as a pest control business when providing a service to set up and maintain the operation of cooling towers. Specifically, you asked whether supplying materials such as pesticides, equipment, and providing operation instructions alone would require licensing. You called following a Cease and Desist Order issued by the Sacramento County Agricultural Commissioner's office against Nalco Company.

The Food and Agricultural Code (FAC) section 11701 requires any person who advertises, solicits, or operates as a pest control business to be licensed by the Department of Pesticide Regulation (DPR) as a pest control business. FAC section 11702 requires the pest control business to designate the qualified applicator licensee (QAL) who will be responsible for the conduct of the pest control operations of the licensed principal office and for each designated licensed branch location. This person is also responsible for the supervision and training of employees performing pesticide applications that treat cooling towers and evaporative condensers.

Some pest control activities are exempt from DPR's commercial licensing requirements, specifically, FAC section 11531(c) exempts household or industrial sanitation services from DPR's business licensing requirements. The use of registered sanitation service pesticides for treatment of cooling towers and evaporative condensers would not require a pest control business license or QAL in these settings. However, the pest control business license and associated QAL are required for sanitation service treatment in institutional settings. An "institutional use" is defined as use within the confines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes. These uses are not exempt from the current licensing requirements.

If Nalco Company in its principal and branch locations within California provided only pesticides, equipment, and instruction, but did not dispense the pesticide into a delivery device or calibrate the application equipment, it would not be providing an application service. It is this

Mr. Bruce Howard

August 25, 2004

Page 2

service that helps define a pest control business. Without the service of providing or assisting in the application of the pesticide, Nalco Company would be a pesticide and equipment provider as opposed to a pest control business.

At this time, DPR staff has licensed nine Nalco Company employees for the QAL category "A" Residential, Industrial, and Institutional exam. DPR has also issued Nalco Company a pest control business license so that it may continue to provide cooling tower operations maintenance through routine or incidental calibration and/or dispensing of pesticide into delivery tanks. Each business office or branch location must also register with the county agricultural commissioner in the county where the pest control business operates.

Please contact me if you have additional questions.

Sincerely,

ORIGINAL SIGNED BY

David Duncan, Chief
Pest Management and Licensing Branch
(916) 445-3870

cc: Mr. Douglas Y. Okumura, DPR Assistant Director
Mr. Scott T. Paulsen, DPR Chief

bcc: Mr. Mac Takeda, DPR Agriculture Program Supervisor
Duncan Surname File